

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 9, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref: 10od-214

OAHU

Amend Grant of Non-Exclusive Easement No. S-5991 for Boat Dock Purposes; HRK Waipahu, LLC, Grantee; Heeia, Koolaupoko, Oahu; TMK (1) 4-6-003:seaward of 077.

BACKGROUND:

On July 22, 2009, under agenda item D-11, the Board authorized the issuance of a 55-year term non-exclusive easement (GL 5991) for boat dock purposes to Marilyn CupChoy Trust for an original area of 118 square feet. A copy of the original easement map is attached as Exhibit A.

Around July 2010, HRK Waipahu, LLC (HRK) bought the CupChoy's property and became the grantee of GL 5991.

In September 2010, HRK proposed to reconstruct the boat dock with a new area of 456 square feet, more or less. The dock will consist of timber deck beams supported by concrete and anchored with concrete posts.

REMARKS:

Office of Conservation and Coastal Lands (OCCL) has reviewed the request for the proposed dock with a new area of 456 square feet, and the Chairperson approved the CDUA OA-3563 on November 18, 2010. A copy of the approval is attached as Exhibit B, which states the proposed use is exempt from environment assessment pursuant to §11-200-8(2), Hawaii Administrative Rules.

Upon receipt of the CDUA, staff notes that a revision of the easement area from the original 118 square feet to the new area of 456 square feet in GL 5991 is necessary. In view of the expanded area, additional consideration is also required from HRK. Staff recommends the Board authorize the amendment of GL 5991 by (1) replacing the original easement area of 118 square feet with the new area of 456 square feet, further subject to the confirmation of the Department of Accounting and General Services, Survey Division regarding the final area; and (2) authorizing the Chairperson approve a pro-rated consideration for the additional area based on the consideration paid under GL 5991.

Staff did not solicit comments from other agencies as such process has been undertaken by OCCL. There are no other pertinent issues or concerns. Staff does not have any objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of Grant of Non-Exclusive Easement No. 5991 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following, by:
 - A. Replacing the original easement area of 118 square feet with the new area of 456 square feet, more or less;
 - B. Requiring HRK Waipahu, LLC provide map and description for the new area;
 - C. Payment of a pro-rated consideration for the additional area based on the consideration paid under GL 5991, as approved by the Chairperson;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

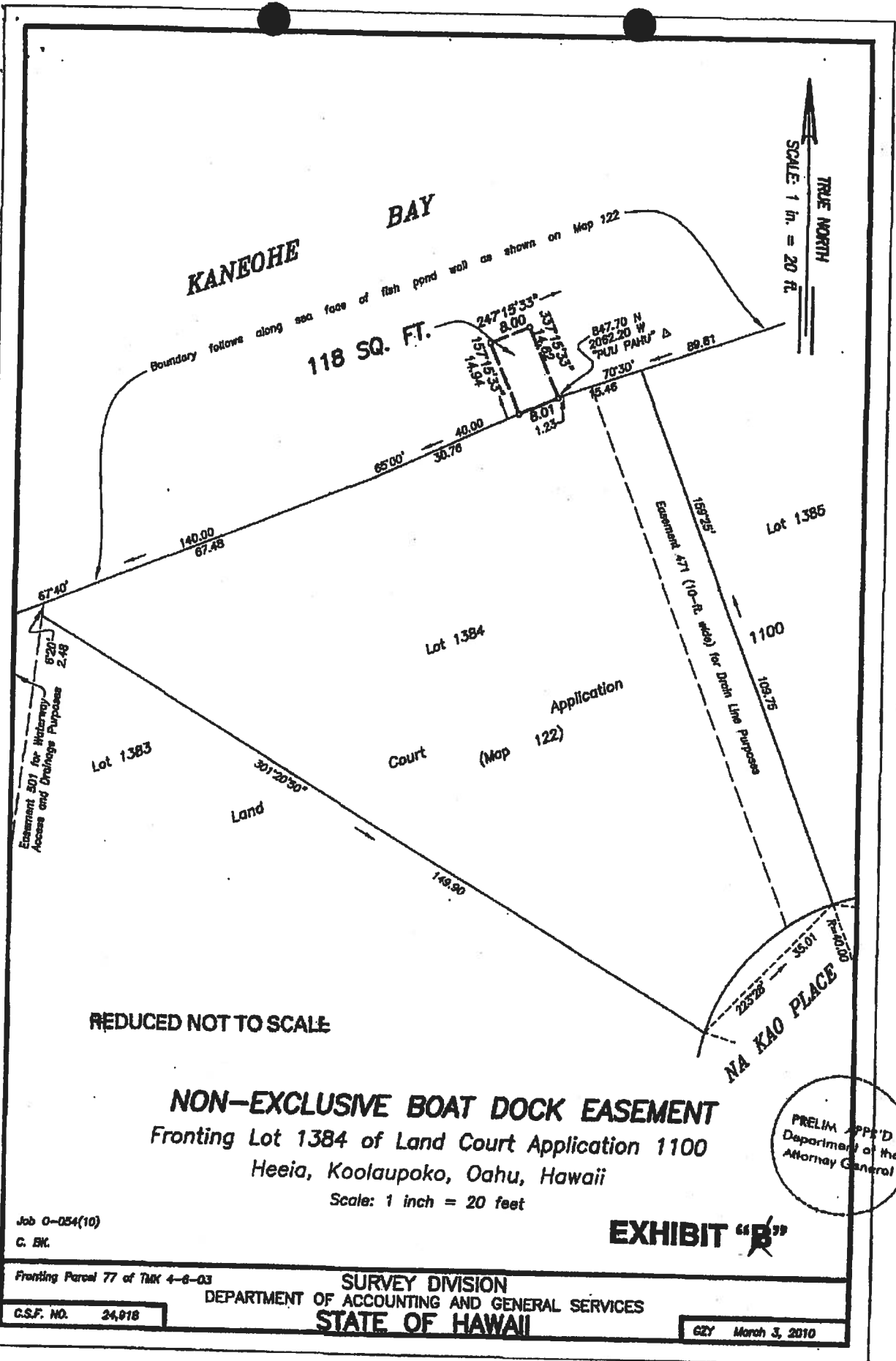


EXHIBIT "A"

State of Hawaii
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawaii

REF:OCCL:DH

CDUA: OA-3563

Acceptance Date: August 25, 2010
180-Day Exp. Date: February 21, 2010

STAFF REPORT:

TO: Chairperson's Office, Department of Land and Natural Resources (DLNR)

REGARDING: Conservation District Use Application (CDUA) OA-3563 Regarding Reconstruction of a Pier

APPLICANT: Clyde Kaneshiro, HRK Waipahu LLC, 1169 Mikole Street, Honolulu, Hawaii, 96819

LOCATION: 46-194 Na Kao Place, Kaneohe, Island of Oahu

TMK: Located makai of Subject Parcel TMK: (1) 4-6-003:077

USE: 456 Square Feet

SUBZONE: Resource

PRIOR CDUA:

On July 27, 1979, the Board of Land and Natural Resources (BLNR) approved CDUA OA-1128 for a recreational dock; subject to eight (8) terms and conditions (**Exhibit 1**).

DESCRIPTION OF AREA/CURRENT USE:

The dock will be reconstructed on the makai/ocean side of Subject Parcel TMK: (1) 4-6-003:077. The shoreline follows along an existing CRM wall. At the base of the CRM wall, water is two (2) foot deep then slopes downward ten (10) to fifteen (15) feet towards the bay. In the past, Kaneohe Bay was extensively dredged and filled; this has modified the shoreline and marine habitat. In addition, treated sewage was released in Kaneohe Bay's southwest sector from 1963 to 1978 which has lead to the development of larger particulate feeding animal species (sponges, tunicates, barnacles). None of the organisms in the bay in the project area are considered rare or endangered.

Construction of the proposed boat dock will not affect traditional or customary native Hawaiian rights associated with Kaneohe Bay. Access to the subject parcel itself is via Kamehameha Highway to Na Kao Place. There are no known historical, archeological, or cultural sites on the site.

EXHIBIT " B "

The OCCL notes the subject parcel is located in the State Land Use (SLU) Conservation District, Resource subzone (**Exhibits 2 and 3**).

PROPOSED USE:

The applicant would like to reconstruct a boat dock that was previously 176 square feet in size to 456 square feet. It will be 30 feet wide and project from the shoreline at 15.81 feet at the western edge and 14.62 feet out from the eastern edge. The original concrete footings are still in place and will be utilized for the new pier. The pier will consist of timber deck beams supported by concrete, and anchored with concrete posts (**Exhibit 4**).

AGENCY COMMENTS:

CDUA OA-3563 was referred to the following agencies for review and comment: Department of Land and Natural Resources (DLNR) – Division of Forestry and Wildlife (DOFAW), Oahu District Land Office (ODLO), Division of Boating and Ocean Resources (DOBOR), Historic Preservation Division (HPD), State Parks Division, Engineering Division, Division of Conservation and Resources Enforcement (DOCARE), Department of Health (DOH), Environmental Planning Office, Office of Environmental Quality Control (OEQC), Kaneohe State Library, Kaneohe Neighborhood Board, Office of Hawaiian Affairs (OHA), and City and County of Honolulu Planning and Permitting Department (DPP). The following comments were received:

Oahu District Land Office

Upon approval of the CDUA the applicant is required to obtain the Board's approval pertaining to the revision of the pier area.

Applicant Response: We will obtain the Land Board approval to amend the current lease area from 176 square feet to 456 square feet (and to amend the compensation amount). We intend to fully comply with all state laws as we proceed with reconstruction of the boat dock.

Division of Boating and Ocean Recreation

No Comment.

State Parks Division

No Comment.

Engineering Division

The project site is located in Flood Insurance Rate Map (FIRM), Flood Zone X. The Flood Insurance Program does not have any regulation for developments within Flood Zone X.

Applicant Response: We acknowledge your confirmation and finding that the project site is located in Zone X and therefore is not subject to any regulations for development within that zone. We intend to fully comply with all state laws as we proceed with reconstruction of the boat dock.

Historic Preservation Division - Late Comment

HPD notes the wall identified as the fishpond wall is constructed of large boulders cemented together. The wall is not historic; no visible indications or traces of the original Oohope Fishpond wall were identified. Therefore, HPD determination is that no historic properties will be affected.

Staff Note: HPD's comment was late therefore the applicant did not respond to their comment. However, staff notes HPD indicated that no historic properties will be affected.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated September 8, 2010 that:

1. The proposed use is an identified land use in the Protective subzone pursuant to Hawaii Administrative Rules (HAR) Section 13-5-22, C-2, "operations, repair, maintenance, or renovation of existing structures, facilities, equipment, or topographical features which are different from the department approved construction plans, where applicable. When county permits are required the department shall approve the associated plan(s)," please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, Section 11-200-8 (2), the proposed use is exempt.

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long term sustainability and the public health, safety, and welfare.

Staff notes the proposed projects will not have an impact on existing aquatic resources. The action is consistent with the purpose of the Conservation District.

- 2) *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Staff notes that the natural resources will be conserved for future generations, provided that mitigation measures are observed. The applicant has indicated that Best Management Practices (BMP) will be followed when reconstructing the pier.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The proposed area is located seaward of the certified shoreline and outside the Special Management Area (SMA) area.

Recreational Resources and Coastal Ecosystems: The proposed use would not affect the current recreational value (fishing, swimming, diving) of the area, and lateral public access is limited in that area. The applicant's proposed use of best management practices (BMP) seeks to limit and mitigate any potential impacts to the coastal ecosystem.

Historic and Cultural Resources: The applicant notes no known historic and cultural resources would be affected by the proposed project.

Scenic, Esthetic and Open Space Resources: The proposed land use(s) would not appreciably affect scenic, esthetic, and open space resources. The proposed dock would be reconstructed in an area that has been previously disturbed.

Coastal Hazards: Staff notes the subject property is sheltered from storms and other coastal hazards due to its location.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff is of the opinion that impacts have been adequately mitigated and that there will be no adverse impact to existing natural resources within the surrounding area, community, or region.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed projects will fit into the locality and surrounding area; the area is commonly used for recreational piers. Staff notes with the appropriate mitigation measures there will be no significant or deleterious effects to the locality, surrounding area, and parcels.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts and to maximize and enhance the natural beauty and open space characteristics of the subject parcel.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The proposed project is an identified land use in the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR), STRUCTURES, EXISTING, C-2, "operations, repair, maintenance, or renovation of existing structures, facilities, equipment, or topographical features which are different from the department approved construction plans, where applicable. When county permits are required the department shall approve the associated plan(s)." The CDUA requires Departmental approval because it involves the alteration of an existing structure.

Staff notes that the applicant will reconstruct a boat dock that was previously 176 square foot in size to 456 square feet. The existing original concrete footings are still in place. The pier will consist of timber deck beams supported by concrete and anchored with concrete posts. Other improvement will consist of utilizing structured plastic lumber, mesh for decking, boat cleats, aluminum framing, concrete pier and column footings, construction of a handrail, and construction of steps.

Staff notes that in accordance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, Section 11-200-8 (2), which notes, "replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced," the proposed use is exempt.

Finally, staff notes the proposed land use will blend in with the natural environment and scenic and aesthetic will not be affected. Staff notes that some of the surrounding subject parcels also have piers. BMP's will be used to mitigate any impacts.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Chairperson of the Board of Land and Natural Resources APPROVE CDUA OA-3563 for pier reconstruction seaward of Subject Parcel TMK: (1) 4-6-003:077, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"

- 3) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 6) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 7) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 8) The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
- 9) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 10) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 11) Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes shall be prohibited of the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as permitted pursuant to Section 205A-71, HRS;
- 12) The applicant will use Best Management Practices for the proposed project; and
- 13) That the applicant will receive approval from the Board of Land and Natural Resources (BLNR) to amend the current lease area from 176 square feet to 456 square feet;

- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void

Respectfully Submitted,

Dawn T. Hegger

Dawn T. Hegger
Senior Staff Planner

Under the authority of Section 13-5-30(a) and Section 13-5-33, Hawaii Administrative Rules, this request for a Departmental Permit for CDUA OA-3563 is hereby:

☒ Approved

☐ Disapproved

Dated at Honolulu, Hawaii this 18 day of Nov, 2010

Paul J. Conry

for LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

August 2, 1979

REF. NO.: CPO-677
FILE NO.: OA-2/27/79-1128
180-Day Exp. Date: 8/30/79

Mr. John M. Canterbury
[REDACTED]

Dear Mr. Canterbury:

Subject: Conservation District Use Application for Private Recreational Use at Kaneohe, Oahu

Based on your letter dated July 26, 1979 regarding the removal of the unauthorized platform, this is to inform you that the Board of Land and Natural Resources at its meeting of July 27, 1979, under agenda Item H-3, approved your application subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Sections 6A and 6D of Departmental Regulation No. 4, as amended (attached);
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairman;
4. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
5. In the event unanticipated historical or archaeological remains are encountered by the effectuation of the proposed use, the applicant shall immediately contact the Historic Preservation Office at 548-6408;

EXHIBIT 1

and 5/6

Mr. John M. Canterbury
Page 2
August 2, 1979

6. That the applicant comply with all applicable Public Health Regulations;
7. The applicant or applicant's assigns shall be responsible for the maintenance, repair, and, if warranted due to circumstances unforeseen at this time, removal of the pier at no cost to the State of Hawaii; and
8. Pursuant to Section 13 of Departmental Regulation No. 4, as amended, the applicant shall pay for the sum of \$500.00 as penalty for the unauthorized use of State-owned Conservation lands; payment shall be made prior to Land Board action for land disposition (See Condition No. 4 above) otherwise approval for use of Conservation District shall be null and void.

Should you have questions on any of these conditions, please feel free to contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

Susumu Odo

SUSUMU ODO, Chairman
Board of Land and Natural Resources

Att.

cc: Oahu Board Members
Oahu Land Agent
U. S. Fish & Wildlife
U. S. Corps of Engineers
U. S. Coast Guard
Department of Health
Dept. of Transportation
OEQC/EQC
C&C/DLU

bcc: Land Management
DOWALD
Fish & Game
NARS

LB
LB:eyo

OAHU

Subject Area
TMK: (1)4-6-003:077

Map of Oahu, Hawaii, showing county boundaries and major locations. The map includes a compass rose in the bottom left corner. Key locations labeled include Kaneohe, Pearl Harbor, Honolulu, and various other towns and points of interest. A handwritten note with an arrow points to the Kaula area, indicating the 'Subject Area' with TMK: (1)4-6-003:077.

Subject Area
TMK: (1) 4-6-003:077

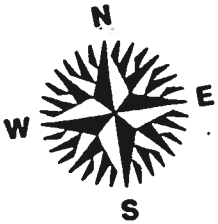


EXHIBIT 2

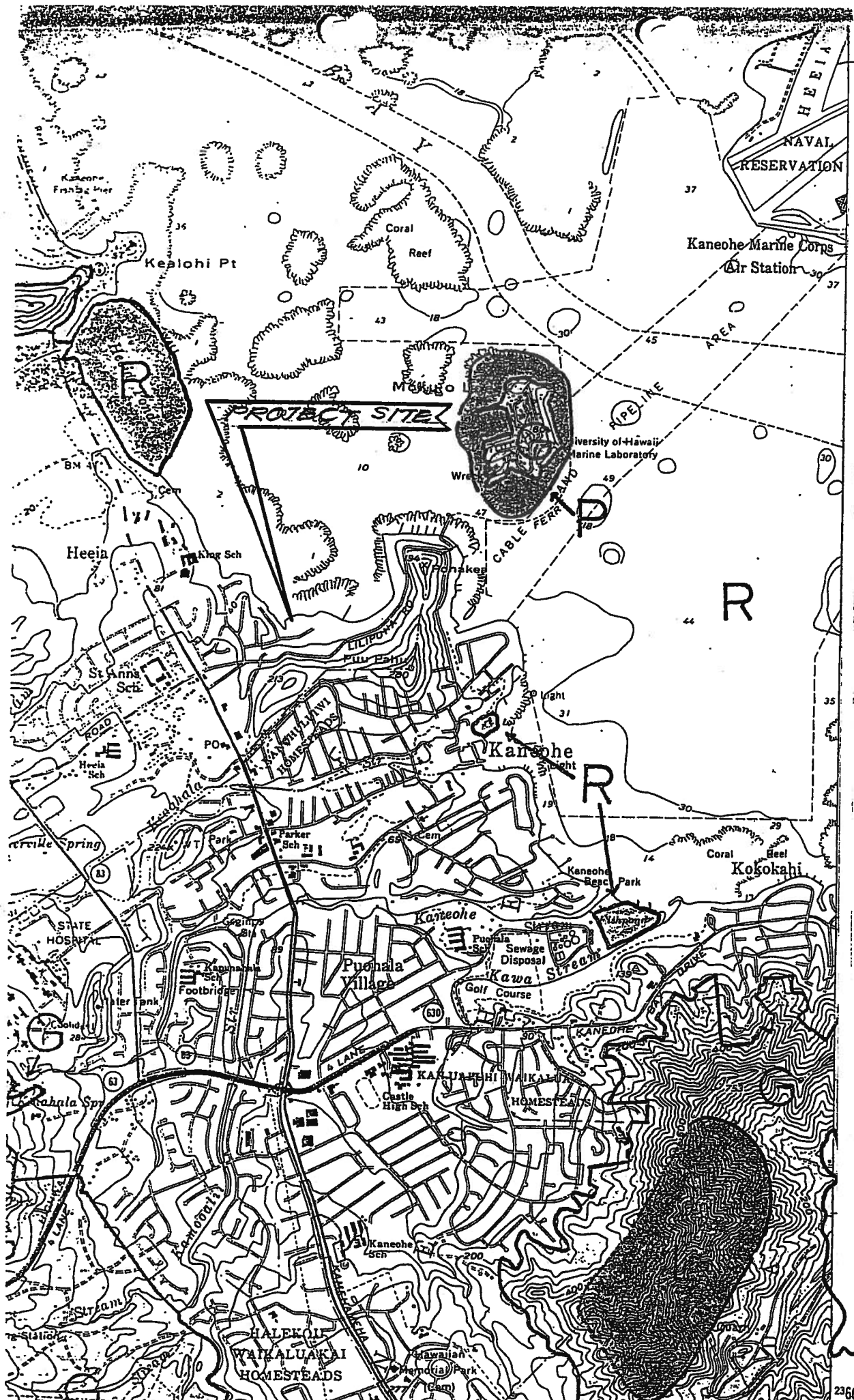


Exhibit B – Location Map

Conservation District Resource Sub Zone

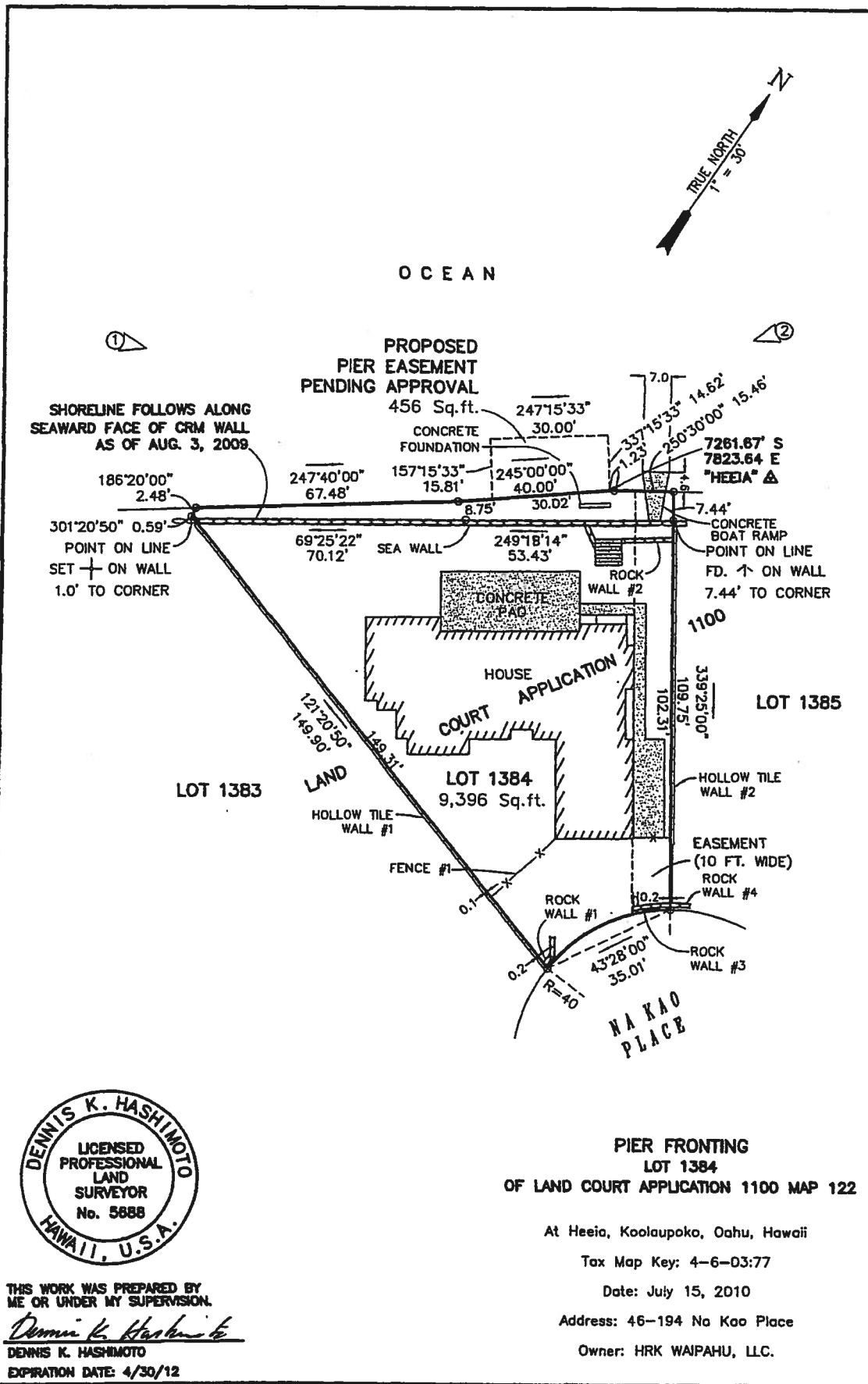
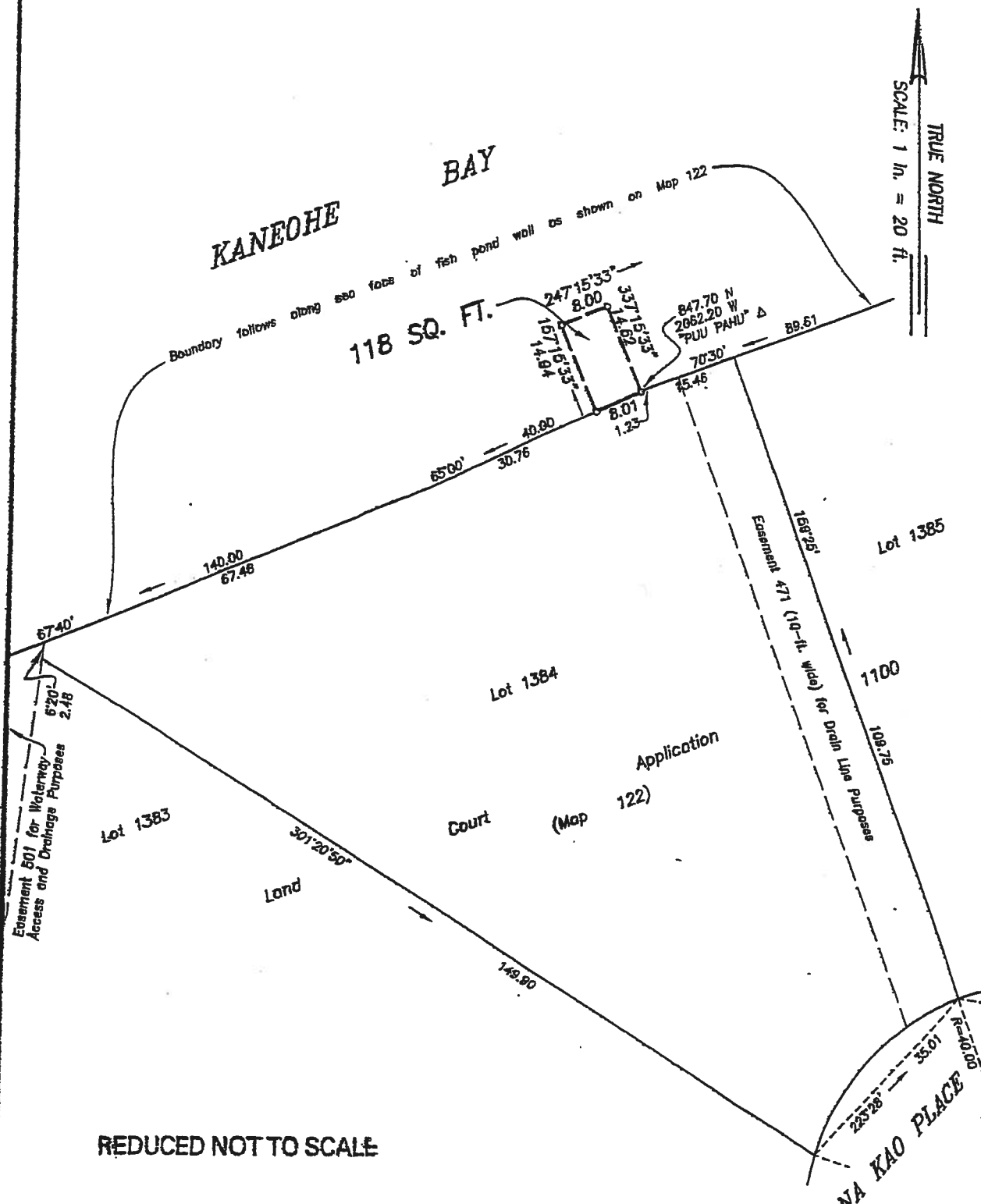


Exhibit 3 - Certified Boundary Survey July 15, 2010



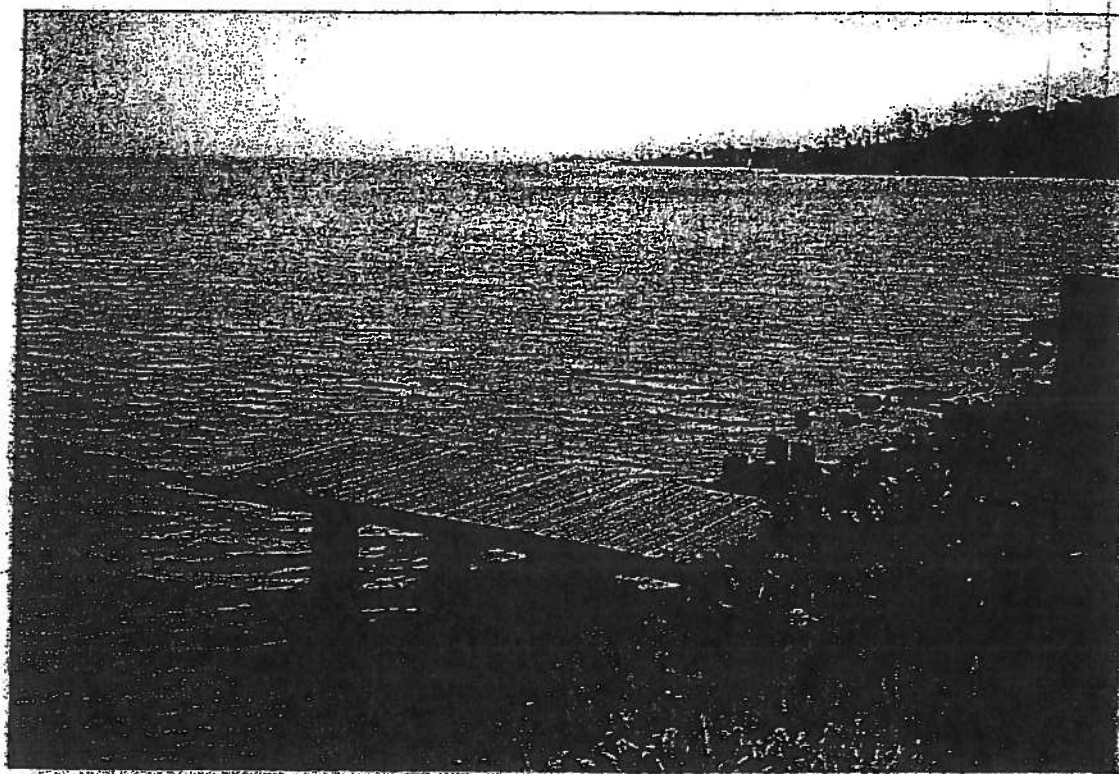
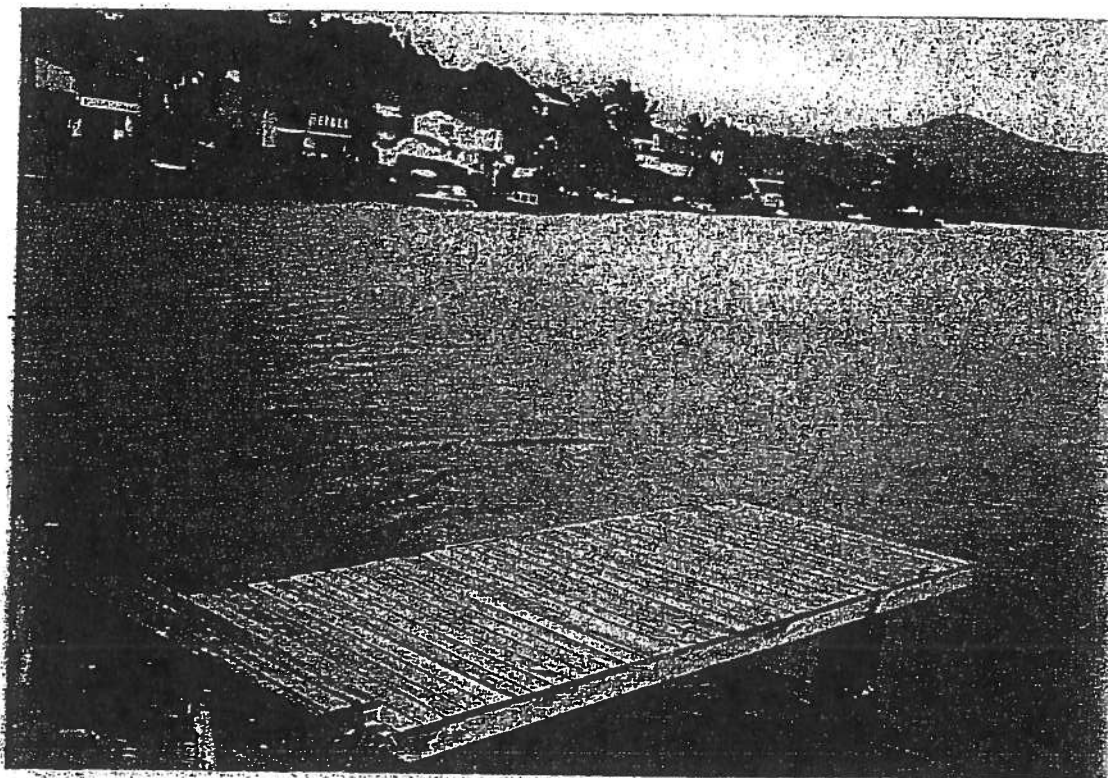


Exhibit 3

Original Structure Photos

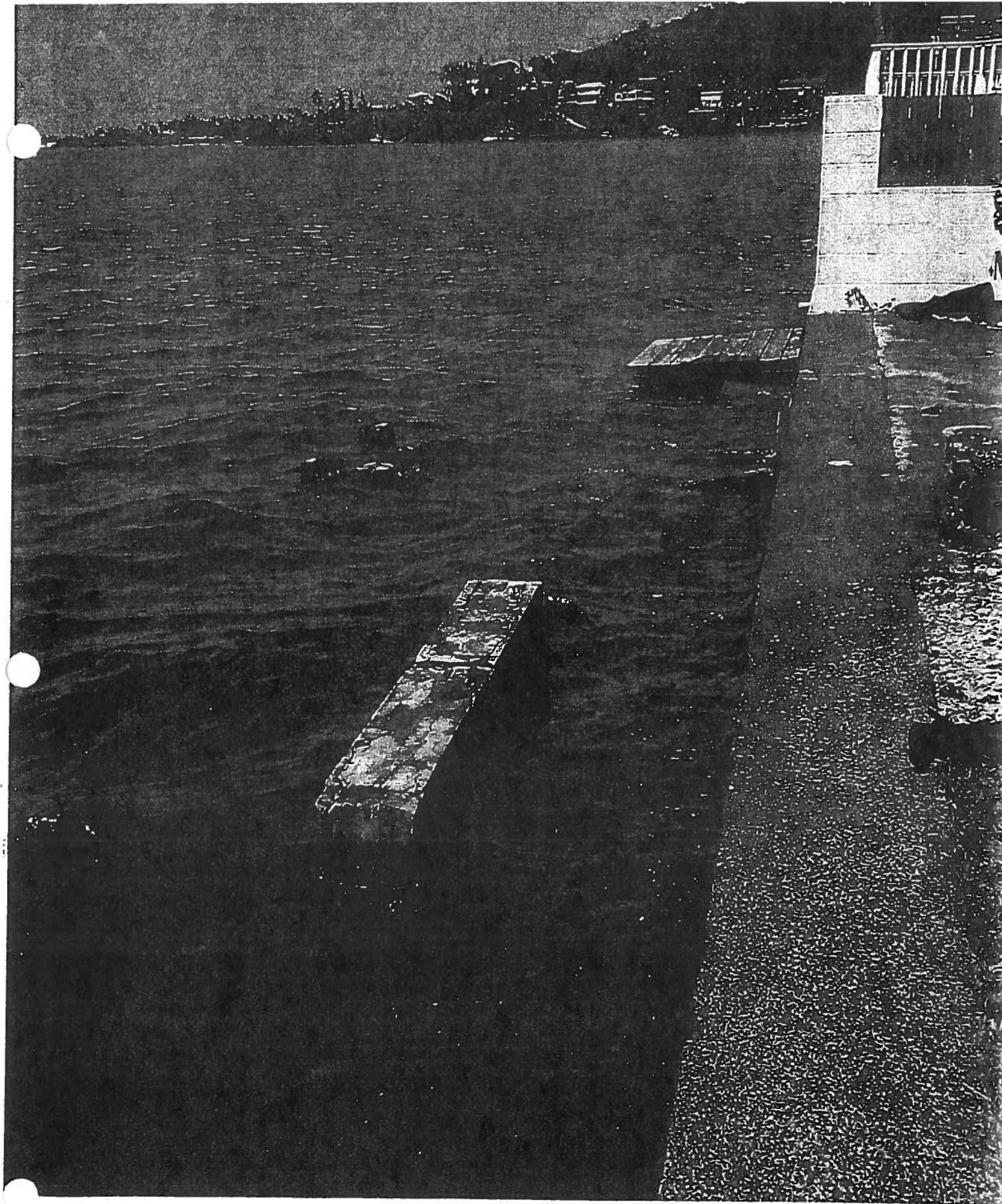
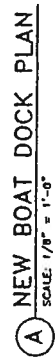
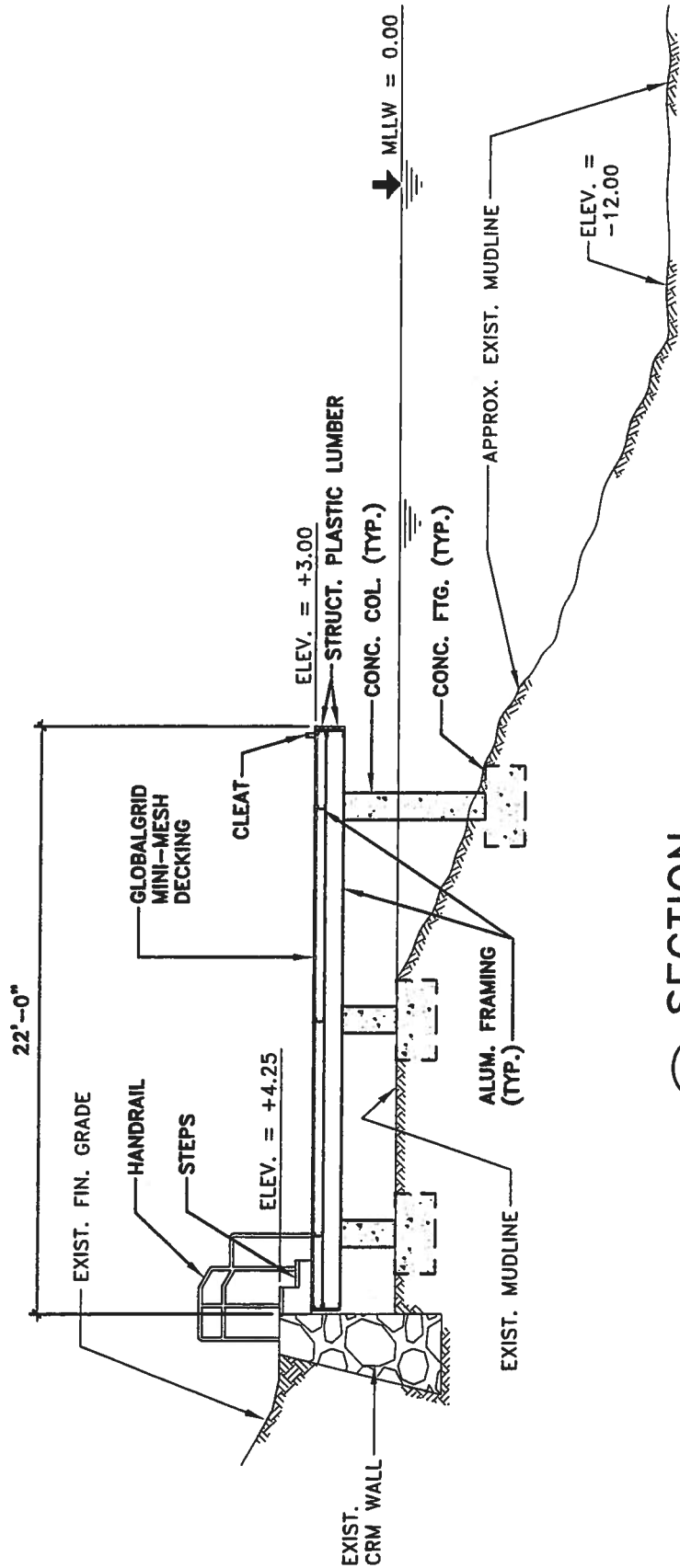


Exhibit 3
Project Site Photos



PREPARED BY: ARNOLD T. OKUBO & ASSOC., INC.
CONSULTING STRUCTURAL ENGINEERS

DATE: SEPTEMBER 3, 2010



SECTION

SCALE: 1/4" = 1'-0"

PROPOSED BOAT DOCK
AT
46-194 NA KAO PLACE
Kaneohe, Hawaii

PREPARED BY: ARNOLD T. OKUBO & ASSOC., INC.
CONSULTING STRUCTURAL ENGINEERS
DATE: SEPTEMBER 3, 2010

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

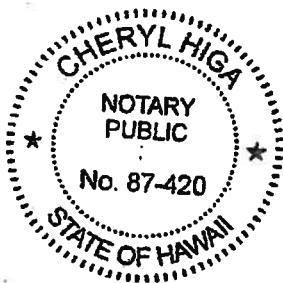
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On this JUL - 1 2010 day of July, 2010,
before me personally appeared Clyde T. Kaneshiro,
to me personally known, who, being by me duly sworn or affirmed,
did say that such person executed the foregoing instrument as the
free act and deed of such person, and if applicable in the
capacity shown, having been duly authorized to execute such
instrument in such capacity.

[Signature]
Notary Public, State of Hawaii

Cheryl Higa

My commission expires: AUG - 2 2011



Document Date:	<u>JUL - 1 2010</u>	# Pages:	<u>15</u>
Notary Name:	<u>CHERYL HIGA</u>	Circuit:	<u>DT</u>
Doc. Description:	<u>Grant of Non-exclusive Easement S. 5991</u>		
Notary Signature:	<u>[Signature]</u>	Date:	<u>JUL - 1 2010</u>

